



Office of Command Counsel Newsletter

August 1999, Volume 99-4

REDS Adopted As AMC As Model ADR Program for Workplace Disputes

AMC Commander **General John G. Coburn** announced in June that he supports the adoption of **REDS**--Resolving Employment Disputes Swiftly, as the AMC Alternative Dispute Resolution (ADR) model for workplace disputes.

Successful One-Year Test

The 1998 one-year test program at ARL, TACOM-W and Anniston proved very successful in the early identification of issues and the attempt to reach resolution before litigation. Unions have been very supportive of the program, which is essential for full implementation.

The next step in the execution of **REDS** is the identification of **REDS** Teams at each AMC installation. Each **REDS** Team is chaired by EEO with membership from the civilian personnel and legal community.

On June 22, **General Coburn** sent a memorandum to the MSC Commanders announcing support for **REDS** and asking that they designate a **REDS** Team. This memorandum was then forwarded by the MSCs to subordinate activities (Encl 1).

REDS Training

A 1-1/2 day **REDS** Training program will be conducted during September.

The curriculum will be finalized in August, and **REDS** Team members will receive further information shortly.

The Department of Army has approved **REDS** as meeting the requirements to offer ADR at the EEO pre-complaint stage.

Further information on **REDS** can be obtained from **Steve Klatsky**, DSN 767-2304 or **Linda Mills**, DSN 767-8050.

AMC Forum Debuts--Law Firm Intranet

The **AMC Forum**, part of the JAGCNet is up and running. Please access it and you will find a host of information contained in nearly a dozen subject matter categories. Plus, you can initiate a dialogue or contribute to an existing discussion. POC is **Steve Klatsky**, DSN 767-2304.

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CG Reappoints Korte: AMC ADR Senior Advisor-- MSC Chief Counsel's Also to be Redesignated

AMCCG

25 June 1999

MEMORANDUM FOR Mr.
Edward J. Korte, Command
Counsel

SUBJECT: Appointment of the
U.S. Army Materiel Command
(AMC) Alternative Dispute
Resolution (ADR) Senior Advisor

1. I hereby reappoint you as the
AMC ADR Senior Advisor,
recognizing the significant
achievements you have made in
introducing and implementing
ADR programs throughout AMC
since your original appointment of
10 September 1993.

2. AMC is recognized by the Army
ADR Specialist, the Principal
Deputy General Counsel, as a
leader in ADR. The AMC-level
Protest Program, Resolving
Employment Disputes Swiftly, and
the AMC Partnering Program, are
vital program components that seek
to design and implement initiatives
that avoid traditional litigation.
Additionally, the AMC ADR
Pamphlet, will be a great tool for
educating both the AMC workforce
and our customer community on
the benefits of ADR.

3. Through separate
correspondence to the Major
Subordinate Command (MSC)
Commanders, I will provide
notification of my appointment of
you, and my expectation that they
will reappoint their Chief Counsel
as Senior Advisor for ADR.

4. As I visit AMC installations and
activities, I will emphasize ADR as
a critical component of AMC's
ability to create initiatives to save
the costly expenses and program
delays that characterize litigation.

5. You have briefed me on the
status of ADR within AMC and I
look forward to your periodic
updates to me on this vital
program.

6. AMC — Your Readiness
Command ... Serving Soldiers
Proudly!

JOHN G. COBURN
General, USA
Commanding

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Letters to the Editor are
accepted. Length must be
no longer than 250 words.
All submissions may be
edited for clarity.

Acquisition Law Focus

Contractor Self-Oversight Program

The TACOM-ARDEC Legal Office recently had occasion to advise a contracting officer on the impact of a recent Defense Contract Management Command (DCMC) Acquisition Reform initiative, the Contractor Self-Oversight Program (CSO). This article summarizes the program and its impact on contract administration.

One of the key goals of Acquisition Reform was to improve contract administration within the DOD.

The CSO program allows "quality contractors" the opportunity to have their personnel perform surveillance functions in lieu of DOD personnel. Under CSO, routine manufacturing and product assurance surveillance is provided by contractor personnel, in lieu of direct DCMC in-plant surveillance.

This is accomplished by empowering contractor personnel to perform the majority of Government Source Inspection (GSI) activities thereby eliminating the time DCMC personnel spend on processes with good performance history and allowing

the refocusing of DCMC resources into areas requiring more intensive oversight

Designated contractor personnel serving in this capacity are referred to as Technical Compliance Designees (TCDs). CSO is only used when the DCMC Contract Administration Office (CAO) and the customer(s) have confidence in the contractor's ability to provide the necessary surveillance and when it will not result in additional cost to the Government.

The scope of the CSO agreement is dependent upon the concurrence of the contractor, the responsible DCMC Commander, and the affected customers. Specific facilities, programs, processes, product lines and/or test and development processes covered under the CSO agreement are defined in the applicable CSO Memorandum of Agreement (MOA). Adoption of CSO always requires the agreement of customers, the contractor, and DCMC.

POC is TACOM-ARDEC's **Kenneth J. Hanko**, DSN 880-6587 (Encl 2).

List of Enclosures

1. REDS-ADR for Workplace Disputes
2. Contractor Self-Oversight Program
3. Avoiding Personal Services Contracts
4. IP Protections for Software-Related Inventions
5. Clean Air Immunity Waiver--6th Circuit Case
6. Disposal of Army Real Estate
7. Non-BRAC Disposals
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9. Environmental Requirements Affecting Real Property
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13. Prohibited Sources
14. Use of Motor Vehicles and Drivers
15. Election 2000 Public Affairs Guidance

Acquisition Law Focus

Avoiding Personal Services and Contractors in the Workplace

CECOM's **Pat Terranova**, DSN 992-3210, provides an excellent article on personal services contracts, with an emphasis on that doctrine's relationship with the issue of contractors in the workplace (Encl 3). In this regard, it is of the utmost importance that Government personnel avoid violating the express prohibition against "personal services" contracts.

In order to avoid a personal services contract it is necessary to be able to recognize one. A personal services contract is a contract that, either by its express terms or as administered, makes contractor personnel appear to be Government employees. The Government is required to obtain its employees by direct hire under competitive appointment or other procedures established by the appropriate civil service laws. Obtaining personal services by contract, rather than by direct hire, circumvents these laws.

A personal services contract is characterized by the employer-employee relationship it creates between the

Government and the contractor's personnel. Federal Acquisition Regulation (FAR) 37.104(c)(2) states that the key question in determining whether an employer-employee relationship is created between the Government and the contractor is: "Will the Government exercise relatively continuous supervision and control over the contractor personnel performing the contract?" Simply stated, although they may be working side-by-side, contractor employees cannot be supervised by Government personnel. An arms-length relationship must exist between the Government and contractor.

Additionally, contractor personnel cannot perform "inherently Governmental functions," that is, any functions which require the exercise of personal judgment and discretion on the part of a Government official. Work assignments and taskings to a contractor must be issued by the Government's point of contact, usually the Contracting Officer or the Contracting Officer's Representative, not by Government supervisors.

CG Supports Partnering-- Urges Further AMC MSC Efforts

By memorandum of 4 June 1999, **General Coburn** underscored his support for the AMC Partnering Program, asking his MSC Commanders to include Partnering as a briefing subject during MSC orientations,

In part the CG stated "I am very impressed by the AMC Partnering Program and the many benefits that have already been accomplished. I ask each of you to continue to take a personal interest, and to work with your MSC Lead Partnering Champions, in expanding the implementation of our Partnering efforts so that we will realize the full potential of this outstanding acquisition reform initiative."

These MSC Partnering briefings will be based on the Partnering Self-Assessments developed during the January 1999 Lead Partnering Champion Workshop, and subsequently completed at the MSCs.

Acquisition Law Focus

Contract Options--Court of Appeals Decision in IOC for Software-Related Inventions

The IOC recently received a decision from the United States Court of Appeals for the Federal Circuit on one of our contracts that all contracting officers and contract specialists need to be aware of.

The generic facts are that the IOC had a contract in place for a basic quantity and a 100% evaluated option. The delivery schedule for the basic contract quantity that was in the original contract required deliveries to be made on a monthly basis at a flat rate.

The contract contained a standard option provision that stated that "Delivery of the items added by exercise of this option shall continue immediately after, and at the same rate as delivery of the like items called for under the contract, unless the parties agree otherwise." The contracting officer and the contractor executed a bilateral modification revising the delivery schedule for the basic contract quantity. The United States Court of Appeals for the Federal Circuit disagreed with the District Court and

held that the option had not been validly exercised. The Court of Appeals held that because the delivery rate imposed by the contracting officer departed from the terms of the contract option clause, the exercise of the option was invalid. The Court of Appeals declined to state what the rate should have been under these circumstances, but only concluded that the rate that was unilaterally imposed was not the correct one. The Court went on to state that notwithstanding the invalidity of the option exercise, the contractor was nonetheless, obligated to continue with the performance of the option exercise under the Disputes Clause.

The important lesson to be taken from this decision is that when we revise contract delivery schedules, we must address the delivery schedule applicable to the option quantity as well. Our failure to do so may result in invalid option exercises where we have to exercise an option on a unilateral basis.

POC is **John W. Seeck**, DSN 793-8462.

AMCOM IP counsel **Hay Kyung Chang**, DSN 746-5109, has provided an excellent treatise on the law of patentability of software inventions (Encl 4).

The article also provides an excellent introduction on the basic objectives of the laws that protect intellectual property: "...to encourage private endeavors and investment in the development, production and public dissemination (in the cases of patents and copyrights) of various forms of new technology and information.

With respect to patentability of computer software, the basic principle "Whoever invents or discovers any new and useful process, machine manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title--35 U.S.C. Section 101.

Employment Law Focus

EEOC Has the Authority to Order Compensatory Damages

In the case of West v. Secretary of Veteran's Affairs, No. 98-238, June 14, 1999, the United States Supreme Court held 5-4 (opinion by Breyer; dissent by Kennedy) that the Equal Employment Opportunity Commission (EEOC) has the legal authority to require federal agencies to pay compensatory damages when they discriminate in employment in violation of Title VII, 42 USC s 2000 et seq.

Although Title VII does not explicitly mention compensatory damages, it states the EEOC has authority to enforce "through appropriate remedies, including reinstatement or hiring of employees with or without back pay."

The Court emphasized the term "appropriate" broadened the EEOC's power in the statute and further relied on the term "including" in determining the EEOC's power was not limited to the remedies specifically mentioned. Additionally, in 1991 Congress passed the Compensatory Damages Act (CDA), 42 USC s 1981, which explicitly gives a petitioner the possibility of compensatory damages when

he has been the subject of unlawful intentional discrimination in the workplace. The court found that when read in tandem with the CDA, Title VII gives the EEOC the power to award compensatory damages.

To deny that an EEOC compensatory damages award is, statutorily speaking, "appropriate" would undermine the remedial scheme. This point is reinforced by the CDA's history, which says nothing about limiting the EEOC's ability to use the new damages remedy or in any way suggests that it would be desirable to distinguish the new Title VII remedy from the old ones.

The Supreme Court on Union Representation and IG Investigations

On June 17, 1999, the Supreme Court issued a ruling (5-4) in NASA v. FLRA which affirms the lower court and the Federal Labor Relations Authority's finding that an employee subject to an Inspector General investigation is permitted to have union representation at an examination conducted by a representative of the agency, if the employee believes that the examination will result in disciplinary action and requests such representation.

The full decision can be downloaded in text or PDF formats at <http://supct.law.cornell.edu/supct/html/98-369.ZS.html>.

Supreme Court Clarifies Definition of Disability Under the ADA

On 22 June, in Albertsons, Inc. v. Kirkingburg, the Supreme Court clarified the definition of a disability for purposes of the ADA. This decision will have a significant impact on complaints of handicap discrimination filed under 29 CFR 1614. The key issue is summarized below:

ADA Requirements

The ADA requires monocular individuals, like others claiming the Act's protection, to prove a disability by offering evidence that the extent of the limitation on a major life activity caused by their impairment is substantial. The Ninth Circuit made three missteps in determining that Kirkingburg's amblyopia meets the ADA's first definition of disability, i.e., a physical or mental impairment that "substantially limits" a major life activity, 42 U.S.C. §12101(2)(A).

Ninth Circuit: 3 Missteps

First, although it relied on an Equal Employment Opportunity Commission regulation that defines "substantially limits" as requiring a "significant restrict[ion]" in an individual's manner of performing a major life activity, see 29 CFR § 1630.2(j)(ii), the court actually found that there was merely a significant "difference" between the manner in which Kirkingburg sees and the manner in which most people see.

By transforming "significant restriction" into "difference," the court undercut the fundamental statutory requirement that only impairments that substantially limit the ability to perform a major life activity constitute disabilities. Second, the court appeared to suggest that it need not take account of a monocular individual's ability to compensate for the impairment, even though it ac-

knowledge[d] that Kirkingburg's brain had subconsciously done just that. Mitigating measures, however, must be taken into account in judging whether an individual has a disability, Sutton v. United Airlines, Inc., ante, at ___, whether the measures taken are with artificial aids, like medications and devices, or with the body's own systems. Finally, the Ninth Circuit did not pay much heed to the statutory obligation to determine a disability's existence on a case-by-case basis. See 42 U.S.C. §12101(2).

Some impairments may invariably cause a substantial limitation of a major life activity, but monocularity is not one of them, for that category embraces a group whose members vary by, e.g., the degree of visual acuity in the weaker eye, the extent of their compensating adjustments, and the ultimate scope of the restrictions on their visual abilities.

Employment Law Focus

Penalty Not Necessarily Reduced If Agency Charges Fail--new Federal Circuit Decision

Thanks to **Susan Bennett**, Anniston Army Depot, DSN 571-6334, for directing our attention to an important recent Federal Circuit decision which affects the MSPB's ability to mitigate agency-imposed penalties when one or more of the agency's charges is not sustained. In LaChance v. Devall, Fed. Cir. No. 98-3213 (May 20, 1999), the Court rejects the notion that a penalty must automatically be reduced if one of several charges falls by the wayside. Although the full text of the decision is attached, the critical portion follows:

"When the Board sustains all of an agency's charges the Board may mitigate the agency's original penalty to the maximum reasonable penalty when it finds the agency's original penalty too severe. When the Board sustains fewer than all of the agency's charges, the Board may mitigate to the maximum reasonable penalty so long as

the agency has not indicated either in its final decision or during proceedings before the Board that it desires that a lesser penalty be imposed on fewer charges. Such a procedure ensures that the agency retains its authority under the Reform Act to serve as employee disciplinarian on the basis of its sustained charges: when the Board mitigates to the maximum reasonable penalty under such circumstances, the Board's action appropriately presumes that it is acting in conformity [*42] with the agency's penalty choice, either because the agency explicitly has made clear its desire that the maximum reasonable penalty be imposed or implicitly has done so by virtue of its silence. If the Board discerns from the record or the proceedings that the agency desires imposition of a lesser penalty the Board must accord the agency an opportunity to institute such a lesser penalty.

OPM's ADR Guide

The new Office of Personnel Management Alternative Dispute Resolution Resource Guide is available from their website: <http://www.opm.gov/adrguide/adrrhome.html-ssi>.

The Guide provides an overall picture of how the most common forms of ADR are being implemented in Federal agencies. It summarizes a number of current ADR programs, including alternative discipline programs, and it describes the shared neutrals program where agencies have collaborated to reduce the costs of ADR. It also has links to other ADR-related websites.

OPM Guidance on EO Prohibiting Discrimination Based on Sexual Orientation

OPM issued guidelines on June 24th implementing EO 13087, which prohibited discrimination on the basis of sexual orientation. The policy statement is in the form of a resource guide available at www.opm.gov.

Environmental Law Focus

New EPA **Yellow Book** on Enforcement

After many years, the US Environmental Protection Agency has revised and published a new “Yellow Book”. This revision should be very helpful to all. EPA’s explanation is: THE YELLOW BOOK: Guide to Environmental Enforcement and Compliance at Federal Facilities has been written to meet the needs of a diverse audience. The Yellow Book’s primary purpose is to provide individuals with Federal Facility environmental responsibilities with an informational tool to help comply with environmental requirements and to clearly explain the compliance and enforcement processes used by EPA and States at Federal Facilities. It can be accessed in PDF format from EPA at: <http://es.epa.gov/oeca/fedfac/yellowbk/index.html>. Or if you have trouble obtaining a copy, contact: **Robert S. Lingo**, DSN 767-8082.

A New CROP for EPA Administrative Hearings

Are you thinking about appealing an EPA enforcement action. You need to know the rules. The EPA has recently revised its Consolidated Rules of Practice, otherwise known as “CROP”). It expands the procedural rules to include certain permit revocation, termination and

suspension actions, and new rules for administrative proceedings not governed by section 554 of the Administrative Procedure Act. The CROP had not been Substantially revised since 1980. The new, revised CROP is available from the AMCCC Environmental Law Team.

Could Your Affirmative Procurement Pass Inspection?

On September 14, 1998, President Clinton signed Executive Order 13101: “Greening the Government Through Waste Prevention, Recycling and Federal Acquisition.” Section 403 of the Order directed that EPA develop guidance for inspections of Federal facilities for compliance with the buy-recycled program established under section 6002 of the Resource Conservation and Recovery Act (RCRA).

On May 12, 1999 EPA issued its guidance. The guidance is to be used by EPA whenever the Agency conducts RCRA inspections or multi-media regulatory compliance inspections where RCRA compliance is a component of the inspection. The guidance may also be used by States authorized to conduct inspections under RCRA.

This guidance should be distributed to Army procurement officials, as well as environmental offices, since they need to be aware of the affirmative procurement requirements and potential for EPA and or State inspections. A copy is available from the Environmental Law Team.

Environmental Law Focus

What's the Status on Clean Air Act Immunity Waiver?

The 6th Circuit recently ruled against the Federal Government and found a waiver of sovereign immunity in the Clean Air Act, allowing the state's to impose punitive penalties. The case involved our Milan Army Ammunition Plant. The 6th Circuit opinion is at enclosure 5. Stay tuned for further developments. **Stan Citron** at DSN 767-8043.

ELD Bulletin for June 99

Environmental Law Division Bulletin for June 1999 is provided for those who have not received an electronic version from ELD or who have a general interest in Environmental Law (Encl 10).

AMC Works Hard on Real Estate Management & Disposal at Iowa Workshop

On 2-6 August 1999, AMC held a Real Estate/Real Property Management Workshop at Bettendorf, Iowa. A main focus of the Workshop was on procedures to identify and dispose of excess installations. For those who were not able to attend, we provide several significant items from the Workshop.

First, the briefing presentation by **Robert Lingo** on General Disposal Issues (Encl 6). The role of the GSA as the federal agency responsible for property disposal is outlined. Also highlighted is the relationship between DA, AMC and the Army Corps of Engineers. Further, the system for reporting property excess is described.

This is followed by Bob's briefing charts on Non-BRAC

Procedures (Encl 7). This presentation identifies the 20 AMC excess installations, describes the excessing process and highlights the applicability of NEPA.

Next is a briefing by **Stan Citron** on Transfer Case Studies (Encl 8). This presentation gives the background of and salient points related to the Red River, Letterkenny and Tooele cases.

We also provide a presentation on Environmental Requirements Affecting Real Property Activity, by **Stan Lowe**, of the AMC Environmental Office (Encl 9).

A presentation by IOC's **Rick Murphy**, DSN 793-8422, outlining the work related to the Tooele Depot Early Transfer is available if you contact Rick.

Ethics Focus

General Coburn On Ethics- Commander's Guidance Statement

On 10 June, General **John G. Coburn** issued a Commander's Statement on Ethics (Encl 11). Among the important principles enunciated in this document are the following:

- AMC has an "enviable reputation of institutional integrity."
- Readiness requires that our actions reflect the highest principles of "honesty, loyalty and selfless service".
- The Standards of Ethical Conduct for Employees of the Executive Branch and the DOD Joint Ethics Regulation

set the "minimum expectations".

- All must have a basic knowledge of the various ethics issues faced by military and civilian personnel.
- "When an ethics issue arises, seek the advice of your Ethics Counselor before you act."

The statement concludes with the following "I expect my commanders, directors, and supervisors to set the example and ensure that ethical issues are resolved while they are still issues and before they become problems."

Prohibited Source--Dirty Word? No!

HQ AMC Ethics Team Chief **Mike Wentink**, DSN 767-8003, provides a paper outlining what it means to be a "prohibited source: means, and what it does not mean(Encl 13).

The paper addresses gift rules and restrictions with respect to engaging in activi-

ties of private organizations (PO), obtaining the prior approval of their supervisors before they can engage in compensated off-duty activity with a prohibited source.

Lastly, the important rules with respect to supporting PO activities by the Army are outlined.

ITO's and Contractor Personnel

Effective October 1, 1999, the Joint Travel Regulation will prohibit the issuance of invitational travel orders ("ITO's") to contractors. This change was originally scheduled to take place on June 1, 1999, but has now been postponed until October.

DFAS will not pay contractor travel vouchers for any contractor ITO's issued after October 1, 1999.

Many AMC contracts already "direct fund" contractor travel through the fixed contract price, through a reimbursable contract line item, or through contractor overhead rates.

These contracts already comply with the change and require no action.

However, many AMC contracts rely on ITO's to fund contractor travel.

For those contracts that rely on ITO's, we recommend that requiring activities contact their contracting officers as soon as possible to direct fund all contractor travel after October 1, 1999. This will likely require a modification to the statement of work.

POC is **Lisa Simon**, DSN 767-2552. A Point Paper on this development is provided (Encl 12).

DOD Guidance on Ethics Issues in Government-Contractor Teambuilding

DoD issued guidance on Government-Contractor Teambuilding on 15 July 1999. **Mike Wentink** posted it to the AMC Info Repository in the AMC Forum on the JAGCNet. To whet your appetites, here is a quote from the introduction to this 45 page document:

“This memorandum begins with a general discussion of Integrated Product Teams (IPTs). This section

addresses the structure of these teams, which are the basis of many DoD initiatives. It then generally discusses the various subject areas of the chapters of the DoD Joint Ethics Regulation (JER). These sections are:

1. Conflicts of Interest
2. Gifts
3. Job Hunting and Post-Government Employment
4. Use of Government Resources

5. Misuse of Government Position and Endorsement
6. Support for Non-Federal Entities
7. Travel and Transportation
8. Training

In each of these sections, there is a general discussion, a statement of the rules for DoD employees, and illustrative examples.

Use of Official Motor Vehicles and Drivers

Mike Wentink, recently provided information on this repeating issue (Encl 14). With very few exceptions, home-to-work transportation is not allowed. Those exceptions include the Secretary of the Army and the Army Chief of Staff.

Rank or grade alone does not justify use of an official administrative use vehicle.

Within the NCR, official vehicles generally may not be used to and from commercial terminals because “Public

and commercial transportation to commercial terminals in the NCR is considered adequate for all but emergency situations, security requirements, and other unusual circumstances.” DoDI 4515.7, para. D.2. This restriction applies to Reagan National, Dulles, BWI, and downtown DC bus and rail terminals.

Official attendance to after hours functions may be approved as an exception to policy. Travel is expected to

begin and end at the employee’s normal place of duty.

If the employee’s spouse is attending a meeting or event with the employee, the spouse may accompany the sponsor in the official vehicle subject to space available (no other employee is displaced and a larger vehicle is not required). There can be no deviation to pick up the spouse, and the spouse may not ride unaccompanied.

Common Sense At Root of Public Affairs *Reebok Rules*

A few days after joining Reebok International, **John B. Douglas III** witnessed a small thing that made a big impression: CEO **Paul B. Fireman** was at the coffee machine making coffee. Today, "Make the coffee" stands as No.11 on Douglas' "Reebok Rules", a list of items he believes are important for the operation of the Reebok legal department.

Douglas does not say that these fit all law firms or legal organizations, but could serve as a springboard for other general counsel who seek to draw their own lists reflecting their companies' own values.

Again, we are not saying these apply to AMC, and you are free to disagree with any particular item:

1. Lawyers should attend all key business and staff meetings.
2. Eliminate the "no" word from your vocabulary.
3. Corporate counsels are business people. None and use your business judgement.
4. Return phone calls promptly.

5. Learn about problems early.

6. Get to know your clients as people.

7. Learn the business.

8. Try spending a portion of your day wandering the halls.

9. Avoid memos. Communicate orally.

10. Integrity is crucial.

11. Make the coffee.

12. Be a problem solver.

13. Stay focused on what is truly important.

14. Be a general practitioner.

15. Do the "legal thing."

16. Be available.

17. Legal work and the bell curve: Not every job requires an "A" effort.

18. Avoid titles.

19. Be proactive. Educate your client groups.

20. Move routine work outside the department.

21. Be enthusiastic.

22. Give answers. Get to the point.

23. Hire people better than you are.

Thanks to **Peg Giesecking** from SBCCOM for this article (with an assist to **Lisa Simon**).

Election 2000--DOD Public Affairs Policy Guidance

DOD's Office of Public Affairs recently issues Election 2000 guidance (Encl 15).

As a matter of long-standing policy, the Department of Defense does not engage in activities that could be interpreted as associating the Department with any partisan political causes, issues, or candidates.

The political activities of individual military members are regulated by DOD Dir 1344.10.

The political activities of civilian employees are restricted by the Hatch Act amendments, 5 U.S.C.. 7321 - 7326 (ref c).

Civilian officers and employees with questions regarding the propriety of prospective political activities, or concerns about possible violations, may be directed to the Hatch Act hotline at the U.S. Office of Special Counsel, (800) 854-2824.

Inquiries from political campaigns should be considered as queries from the general public and should be responded to accordingly.

AMC Legal Office Profile

Tank-automotive & Armaments Command, Warren, MI

Background & History

The command was formed in 1942 and called the Tank-Automotive Center (T-AC). Its mission was tank automotive development, procurement, and maintenance. Over the years, the command has had nine names to reflect changes in mission. The command's latest name change, from the Tank-Automotive Command to the Tank-automotive and Armaments Command, may only be a difference of one word, but reflects a profound change in mission and size. TACOM's mission is to generate and sustain the warfighting capability and readiness for the Army; manage the Army's investment in Science and Technology; Research and Development; and Sustainment; and serve as the life cycle manager and integrator for group equipment.

The Legal Office

The TACOM Legal Office fully supports this mission and is prepared to assist the

command into the next millennium. Like the command, the Legal Office has also grown in size and responsibility: from thirty attorneys and support staff in Warren, Michigan, to sixty-eight attorneys and support staff spanning five states and three time zones.

TACOM is organized into five locations, all managed by the Chief Counsel, Ms. **Verlyn Richards**. Those locations are the Warren, Michigan office, TACOM-Rock Island Legal Group in Illinois, the TACOM-Anniston Legal Group in Anniston, Alabama, the TACOM-ARDEC Legal Group in Picatinny, New Jersey, and the TACOM-Red River Legal Group in Texarkana, Texas. Although the TACOM Legal Office has become larger, its focus on early, active involvement in the command's legal matters remains unchanged. Team work, among not only the far-flung attorneys, but our clients as well, is our goal.

TACOM Legal Teamwork

Ms. Richards continues to emphasize the importance of one, "TACOM of the Future" and one "TACOM of the Future" Legal Office. One method of ensuring communication among all five sites is the TACOM Intranet. The TACOM Intranet links all five sites and provides a quick and easy mechanism to share information. The TACOM Legal Intranet was the first of its type to link multi-site offices. **John Klecha**, of the TACOM-Warren office, created this Intranet site for all of us here at TACOM as well as serving as Assistant Chair of the command-wide AMC Automation Committee.

At the past two CLE conferences in Orlando, we have gathered together for dinner at one of the local restaurants. Which restaurant will we meet at next year?

Teambuilding-Communication

Last month, we all got together for a team building exercise at the University of

AMC Legal Office Profile

Tank-automotive & Armaments Command, Warren, MI (Continued)

Michigan's Center for Creative Development, Dearborn, Michigan. **Bill Kovacic**, a professor at George Mason University Law School, led our exploration into effective communication and the catastrophic effects of a communication breakdown. Most of TACOM-Warren was able to attend this team building exercise as well as TACOM-ARDEC (**Bob Parise, Denise Scott, Ken Hanko and Dean Brown**), TACOM-Rock Island (**K. Krewer and Joe Picchiotti**), and TACOM-Anniston (**Les Mason**).

Recent Efforts

A prime example of resource leveraging has occurred on the TACOM-Rock Island Colt license dispute. **Peter Taucher's** Intellectual Property Law Division, supports not only Warren, but Rock Island too. During the past three years, **Gail Soderling** has provided his IP counsel, and **Maria Bribriesco**, of the Rock Island Legal Group, has brought her Business Law

expertise and program knowledge to bear on this difficult dispute. Working closely with TACOM-Rock Island and ARDEC engineers, Maria and Gail negotiated a modification to the Colt license to allow future competitive procurement of Colt's carbine variant of the M-16 rifle.

Caridad Ramos, also of the Rock Island Legal Group, has been jet setting to all of the major subordinate commands as one of the AMC Roadshow facilitators.

In the arcane world of Other Transactions, **Sue Lewandowski** and **Betsy Burt** of TACOM-Warren have teamed with **Denise Scott** of TACOM-ARDEC to share lessons learned. This teaming not only takes place between the legal offices but, within each office, the attorneys share their knowledge and experience with each other to deal more effectively with the issues of our clients.

At TACOM-ARDEC, **John Moran, Denise Scott, Bob Parise**, and **Jerry Williams**, representing all divisions of the legal group (Business, General, and Intellectual Property Law), participated in

panel sessions aimed at informing both the workforce and industry of the many and varied teaming opportunities. A wide range of topics were touched upon from leases to CRADAs to Other Transactions.

IPTs

At TACOM, in addition to the attorneys teaming to provide more efficient legal services to our clients, the attorneys also work on Integrated Process/Product Teams (IPTs). A complete list of every example of successful team work would be too numerous to list so, like the tip of the iceberg, only a few will be mentioned while the bulk will remain hidden below the surface

Christine Kachan and William Reed, from TACOM-Warren, and **K. Krewer**, from TACOM-Rock Island, worked hard as members of the Paperless Acquisition Team to make the five-site TACOM acquisition process completely paperless, effective June 14, 1999. Each received

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Tank-automotive & Armaments Command, Warren, MI (Continued)

a Two Star Note and Coin from **MG Beauchamp**, and a Certificate of Achievement and Award of Excellence from both **MG Beauchamp** and **MG Michitsch**. It is interesting to note that these awards were not paperless. In fact, the awards were printed on some very nice looking paper. Perhaps the scope of the paperless team should be expanded?

Bob Vollmar and **Violet Kristoff**, of TACOM-Warren worked tirelessly along with some former ATCOM representatives, AlliedSignal, the Acquisition Center, the BRAC Coordinator, Resource Management, and AMC Legal Office in order to respond to the multitude of issues arising from the process of closing the Stratford Army Engine Plant. The team worked together to respond Connecticut congressional concerns, a variety of fiscal law concerns, tax issues, Small Business Administration appeals, environmental concerns, as well as an Intra-Service Support Agreement with Anniston Army Depot (Les

Mason), and a complex set of interlocking contract actions and acquisitions.

The Focus Sustainment contract is an excellent example of command-wide teaming. **Joe Picchiotti** of TACOM-Rock Island was instrumental in the successful award of a ten-year, multiple award, IDIQ contract for one-stop shopping for maintenance and sustainment of TACOM equipment worldwide.

The Scout program, as an international cooperative R&D project with the United Kingdom for a common armed reconnaissance vehicle, represents a challenging teaming effort. As the lead attorney, **Verlyn Richards** tackled the tough cost and benefit sharing issues for the MOU negotiated between the two countries. She also guided **Ronald Majka** and **Dave Kuhn** through the program's many difficult and often times complex IP and contract issues. Dave worked a controversial authorization and consent

issue while Ron advised the PM office on a variety of source selection concerns.

Awards & Recognition

Several attorneys at TACOM have received the Acquisition Reform Award for Excellence as recognition of their efforts as part of a successful IPT: **Betsy Burt**, **Sue Lewandowski**, and **Bob Maskery**.

Also noteworthy, **CPT William Schmittel** received the Chief of Staff Legal Assistance Award.

At the 1999 Continuing Legal Education Program **Bob Parise** was named the Joyce I. Allen AMC Attorney of the Year, and **Carrie Schaffner** was presented with the Preventive Law Award for her significant efforts in the ethics area.

Thanks to Betsy Burt for her efforts in preparing this Profile.

Faces In The Firm

Hello

CECOM

MAJ Kevin P. Fritz, formerly the Officer in Charge of the Joint Service Pentagon Legal Assistance Office, has been assigned as the Deputy Staff Judge Advocate, CECOM and Fort Monmouth, effective 15 July 1999.

Ms. **Carol Brewer**, a rising third-year law student at Newark-Camden, will be interning from May until July. The summer intern program is sponsored by the U.S. Army Judge Advocate Recruiting Office.

TACOM-W

CPT Bradley J. Jan, our new TACOM Command Judge Advocate arrived Jul 99 from Ft. Monroe.

CPT Philip C. Mitchell arrived Jul 99 from Ft. Irwin. He is assigned to our Business Law Division as the AMC Contract Law Attorney.

AMCOM

Welcome to **Major Wade Brown**, joining Branch D, Acquisition Law Division.

TACOM-ARDEC

Ronald D. Brown - Attorney-Advisor joined the General Law Section on April 25th. Dean graduated from Rutgers University School of Law and joins ARDEC from private practice. Dean also has experience as a United States Attorney, prosecuting under both civil and criminal laws.

Kenneth J. Hanko - Attorney-Advisor joined the Business Law Section on April 24th. Ken came to ARDEC from the Defense Contract Management Command. A graduate of Western New England Law School, Ken also commands the 153d Legal Support Organization (JAG Detachment).

John P. McCambridge - Attorney Advisor with the Business Law Section joined ARDEC on May 5th from the Military Traffic Management Command, Office of the Staff Judge Advocate in Bayonne, New Jersey. Jack graduated from St. John's Law School, Queens, New York and has 25 years of service with the government.

WSMR

CPT Justin Tade arrived from Schofield Barracks, Hawaii.

Goodbye

CECOM

Major Marvin K. Gibbs, Deputy Staff Judge Advocate, is leaving the Army and has accepted a job as a contracts attorney with the Military Traffic Management Command in Falls Church, Virginia.

WSMR

MAJ Bradford B. Byrnes PCS'd to TJAGSA 6 Jul 99 for the JAG graduate course.

SGT James Mersfelder PCS'd to FT Irwin, CA.

TACOM-W

CPT William Schmittel, TACOM's Command Judge Advocate will be departing for his new assignment will be at Heidelberg, Germany.

IOC

Gail Fisher, Paralegal Specialist, moved to the TACOM Rock Island legal office in July after 18 years with the IOC family.

Student aide, **Brian Klinkenberg** and student intern **Juanita Winfrey** will be heading back to school soon.

Jo Pietrobbon is retiring from Pine Bluff after 17 years with the legal office. Best wishes to you.

Faces In The Firm

Awards & Recognition Promotions

CECOM

Hazel Smock has been chosen the Ft. Monmouth Secretary of the Year. She was selected from 24 candidates and was recognized at an award ceremony presided over by MG Nabors. The award program is sponsored by EEO and the committee making the selection is comprised of other secretaries within the Command and the resident activities.

IOC

Amy Armstrong, IOC General Law/Installation Support, has been selected as a member of the Department of Defense Executive Leadership Development Program Class of 2000.

AMCOM

Jim McMurray received the Meritorious Civilian Service Award, nominated by his acquisition clients.

Dayn Beam received an award from General Johnnie Wilson for Outstanding Achievement in Value Engineering.

WSMR

WSMR received the 1998 Judge Advocate General's Award for Excellence in Claims. The Claims Service received 35 applications from among the 151 eligible offices, of which nine were named as winners. The Claims Service determined the winners by looking at each office's performance during the 1998 fiscal year.

There were a number of factors which contributed to WSMR being selected for the award. The White Sands JAG Office is the sole activity responsible for processing all claims for the Army within the state of New Mexico. Specifically, the Range command group has recognized the importance of the Army claims mission and has taken affirmative steps to ensure it is adequately staffed. Additionally, the White Sands claims office has processed small and large personnel and tort claims in an exceptional timely manner, and the staff write numerous articles about claims.

The claims mission is handled by **CPT Van Hardenbergh**, **Bill Fugelso**, **Bobbie J. Salas** and **Willie J. Smith** of the JAG Office.

Major Eugene Baime was promoted to his current rank in a ceremony 30 July. Colonel Pulscher, Chief of Staff, officiated. Major Baime has been in the IOC Law Center, Environmental/Safety Law, for just over a year. Congratulations on your promotion.

Births

Angie Davila (Legal Assistant, Environmental/Safety Law) is a gramma! Angie, her husband, John, and daughter, Heather, celebrated the birth of **Alexxis Anjeliqua Rodriguez**! Alexxis, born two months early, is a doll! Our congratulations to the family.

More Farewells

AMCOM

A happy and healthy retirement is what we wish to long time acquisition counsel **Hugh Nicholson**.

Major Scott Gardiner has departed the acquisition law division for assignment to the Judge Advocate General's School.